Sahari bin Masrom v Public Prosecutor

HIGH COURT (MUAR) — CRIMINAL APPEAL NO 42A–16 OF 2007
AHMADI ASNAWI JC
20 OCTOBER 2008

Criminal Law — Corruption — Corruptly receiving gratification — Whether sessions court judge was correct in assessment of evidence — Whether appellant was trapped or framed

Criminal Procedure — Defence — Denial — Offence of corruptly receiving gratification — Whether defence mere denial — Whether ingredients of offence proved — Whether overwhelming evidence pointed to guilt of accused

On 31 May 2001, one Foo Leng ('complainant'), who ran an 'ikan bakar' stall ('stall') in a restaurant, lodged a police report ('report') that her husband had been assaulted by several people. Sahari bin Masrom, the appellant was instructed to investigate into the report, which was classified under s 323 of the Penal Code. When there was no progress in the investigation the complainant sought to withdraw the report. The complainant thereafter alleged that the appellant began frequenting the stall demanding money from the complainant before withdrawing the report or closing the case. On 26 September 2002 the complainant lodged a report with Badan Pencegah Rasuah ('BPR') over the appellant's demand. The BPR team then set into motion a plan to discover whether the complainant's allegation was true. As part of the plan, the complainant was required to call the appellant to discuss the appellant's demand for payment. Three telephone conversations between the complainant and the appellant were thereafter tape recorded. In one of these conversations the complainant offered to pay RM500 to the appellant and this offer was allegedly accepted by the latter. The appellant and the complainant thereupon arranged to meet at the stall so that the latter could pass the RM500 in RM100 denominations ('trapped money'), which she would be receiving from the BPR officers, to the appellant. On the date and time arranged for the meeting, the appellant arrived at the stall and was observed accepting and taking the trapped money from the assistant, by one of the BPR officers assigned to observe the transaction. The appellant was then arrested by members of the BPR team and the trapped money was recovered from him. Two charges were preferred against the appellant. At the close of the trial the sessions court judge convicted the appellant on both charges. This was the appellant's appeal against that decision.

Held, allowing the appeal in respect of the first charge and dismissing the appeal in respect of the second charge:

(1) Although the complainant testified that the appellant had repeatedly visited her to demand for money she had failed to substantiate the time or dates of such requests. Therefore, the complainant's evidence was of no evidentiary value and could not be used to strengthen the prosecution's case that the appellant had demanded the sum of RM1,000 from the complainant. The assistant's testimony in respect of the first charge was also very unreliable because in most of his answers in cross-examination he replied that he could not remember what occurred during his meeting with the appellant (see paras 17–18, & 22).

(2) The fact that the cancellations and substitutions in the BPR report were not acknowledged or initialed by the complainant but instead initialed by the BPR officer who recorded the report added to the fact that the report was not read back to the complainant for the purpose of making any amendments if the latter so wished lead to the possibility that the report was not as the complainant intended it to be or that the report was tampered by the BPR officer recording the report without the complainant's knowledge or consent. This issue was further compounded by the complainant's own admission that she was not conversant in Bahasa Melayu, as no Chinese interpreter was used to assist her in making the report or verifying the contents thereof. In addition the lapse of one year and one month from the date the alleged demand was made by the appellant and the BPR report was lodged with no explanation given by the complainant to account for this delay rendered the BPR report to be of little evidentiary value (see paras 25, 27–28).

(3) There was indeed a break in the chain of evidence in respect of the movement of the tape recordings to the detriment of the appellant. There was no guarantee that the tape recordings were not tampered with when they changed hands from one BPR officer to another for the purpose of duplication or for transcription. These shortcomings were fatal and as such the tape recordings and the transcript of them ought not to be admitted as evidence. In the circumstances the evidence adduced was thoroughly inadequate to warrant the findings of a prima facie case against the appellant in so far as the first charge was concerned (see paras 32, 34–36).

(4) The appellant had more or less conceded the first ingredient of the second charge, ie that he was an agent of the Government of Malaysia. The sessions court judge had considered every material aspect of the second ingredient of the offence both on points of fact and law leaving no room for interference. As such, there was no plausible reason to

depart, especially from the findings of fact. The testimonies of the complainant, her assistant and the BPR officer who observed the trapped money changing hands were carefully considered and accepted. The evidence of these three witnesses was found to be credible and did not warrant total rejection. The trial judge was also entirely correct to take into account that the defence did not dispute the fact that the appellant did in fact meet both the complainant and her assistant in the restaurant and that this lent credence to the fact that the appellant came for corrupt gratification (see paras 38, 40–41 & 44).

(5) The discrepancies pointed out by the defence in the evidence of the complainant, her assistant and the BPR officers as to whether the money was handed through the assistant's left or right hand or accepted by the appellant using his right or left hand were very minor issues which did not erode the crux of the prosecution's case. The relevance of these and the other like issues raised was negated by the fact that the trapped money had passed hands and was recovered from the appellant. The essence of the appellant's case was a complete denial and in the light of the totality of the evidence the sessions court judge had correctly concluded that the second ingredient of the offence had been proven. The evidence was overwhelming that the trapped money was accepted by the appellant and there was no reason for the complainant and her assistant to concoct their evidence relating to the same. Additionally the acceptance of the trapped money was witnessed by the BPR officer who had no grudge against the appellant to testify adversely against the appellant (see paras 48 &67).

(6) The appellant's explanation that the trapped money was placed on the top of the rear of the appellant's car by someone was never suggested to any of the prosecution witnesses and the prosecution was denied the opportunity to rebut the same. In the circumstances it would appear that this evidence was nothing more than a mere afterthought, which went against the weight of the totality of the evidence (see para 68).

(7) The sessions court judge was right in rejecting the appellant's defence that he was trapped or framed because there were no merits or substance in this line of defence. If it was true that the appellant was trapped he should immediately have taken the opportunity to state so in the 'notis tangkapan' when it was served on him (see paras 69–70).

[Bahasa Malaysia summary

Pada 31 Mei 2001, seorang yang bernama Foo Leng (pengadu), yang menjalankan sebuah gerai ikan bakar ('gerai') di sebuah restoran, membuat laporan polis ('laporan') bahawa suaminya diserang oleh beberapa orang. Sahari bin Masrom, perayu, diarahkan untuk menyiasat laporan tersebut,

yang diklasifikasi di bawah s 323 Kanun Keseksaan. Apabila tiada kemajuan di dalam penyiasatan pengadu memohon untuk menarik balik laporan tersebut. Pengadu kemudiannya mendakwa bahawa perayu mula kerap mengunjungi gerainya, menuntut wang daripada pengadu sebelum menarik balik laporan atau menutup kes tersebut. Pada 26 September 2002 pengadu membuat laporan kepada Badan Pencegah Rasuah ('BPR') mengenai tuntutan perayu. Pasukan BPR kemudian merangka satu pelan untuk mengetahui sama ada dakwaan pengadu adalah benar. Sebagai sebahagian daripada pelan, pengadu dikehendaki memanggil perayu untuk membincangkan tuntutan perayu untuk bayaran. Tiga perbualan telefon di antara pengadu dan perayu kemudiannya telah dirakam. Di dalam salah satu perbualan pengadu menawar untuk membayar RM500 kepada perayu dan tawaran ini didakwa telah diterima oleh perayu. Perayu dan pengadu kemudiannya mengatur untuk berjumpa di gerai tersebut supaya pengadu boleh memberikan RM500 dalam pecahan RM100 ('wang perangkap'), yang akan diterimanya daripada pegawai BPR, kepada perayu. Pada tarikh dan masa yang diatur untuk perjumpaan, perayu tiba di gerai tersebut dan dilihat menerima dan mengambil wang perangkap daripada pembantu gerai, oleh salah seorang pegawai BPR yang ditugaskan untuk memerhati transaksi tersebut. Perayu kemudiannya ditangkap oleh ahli pasukan BPR dan wang perangkap diambil daripadanya. Di akhir perbicaraan, hakim mahkamah sesyen mensabitkan perayu atas kedua-dua pertuduhan. Ini adalah rayuan perayu terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan berkaitan dengan tuduhan pertama dan menolak rayuan berkaitan dengan tuduhan kedua:

(1) Walaupun pengadu memberi keterangan bahawa perayu telah melawatnya berkali-kali untuk menuntut wang dia gagal untuk mengesahkan masa dan tarikh permintaan tersebut. Oleh itu, keterangan pengadu tidak mempunyai nilai pembuktian dan tidak boleh digunakan untuk mengukuhkan kes pihak pendakwaan bahawa perayu telah menuntut sejumlah RM1,000 daripada perayu. Keterangan pembantunya berkaitan dengan pertuduhan pertama juga tidak boleh dipercayai kerana kebanyakan jawapannya di dalam pemeriksaan balas dia menjawab bahawa dia tidak dapat mengingati apa yang berlaku semasa perjumpaannya dengan perayu (lihat perenggan 17–18, & 22).

(2) Fakta bahawa pembatalan dan penggantian di dalam laporan BPR tidak disahkan atau diparap oleh pengadu tetapi sebaliknya diparap oleh pegawai BPR yang merekodkan laporan tersebut menambahkan fakta bahawa laporan tersebut tidak dibacakan semula kepada pengadu untuk tujuan membuat apa-apa pembetulan jika dia ingin berbuat demikian

akan membawa kepada kemungkinan bahawa laporan tersebut bukan seperti yang diniatkan oleh pengadu atau bahawa laporan tersebut telah diubah oleh pegawai PBR yang merekod laporan tersebut tanpa pengetahuan atau persetujuan pengadu. Isu ini selanjutnya diburukkan lagi oleh pengakuan pengadu sendiri bahawa dia tidak fasih dalam Bahasa Melayu, kerana tiada jurubahasa Cina digunakan untuk membantunya membuat laporan tersebut atau mengesahkan kandungannya. Tambahan keluputan satu tahun dan satu bulan dari tarikh tuntutan yang didakwa dibuat oleh perayu dan laporan BPR dibuat tanpa penjelasan oleh pengadu untuk menjelaskan kelewatan menjadikan laporan BPR tersebut mempunyai nilai pembuktian yang kecil (lihat perenggan 25, 27–28).

(3) Sememangnya terdapat pemecahan di dalam rantaian keterangan berkaitan dengan pengendalian pita rakaman yang menjejaskan perayu. Tidak ada jaminan bahawa pita rakaman tersebut tidak diusik apabila ia bertukar tangan daripada pegawai BPR kepada seorang lagi untuk tujuan penyalinan atau untuk transkripsi. Kelemahan ini adalah menjejaskan dan oleh itu rakaman tersebut dan transkripnya tidak boleh diterima sebagai keterangan. Dalam keadaan ini keterangan yang dikemukakan jelas tidak mencukupi untuk mewajarkan penemuan kes prima facie terhadap perayu setakat yang berkaitan dengan pertuduhan pertama (lihat perenggan 32, 34–36).

(4) Perayu boleh dikatakan telah mengakui bahagian pertama pertuduhan kedua, iaitu bahawa dia merupakan agen Kerajaan Malaysia. Hakim mahkamah sesyen telah mempertimbangkan setiap aspek material bahagian kedua kesalahan tersebut dari segi fakta dan undang-undang dan tidak meninggalkan ruang untuk campur tangan. Oleh itu tidak ada alasan yang munasabah untuk penyimpangan, khususnya dalam penemuan fakta. Keterangan pengadu, pembantunya dan pegawai BPR yang memerhati wang perangkap bertukar tangan dipertimbangkan secara teliti dan diterima. Keterangan ketiga-tiga saksi tersebut didapati boleh dipercayai dan tidak mewajarkan penolakan secara mutlak. Hakim bicara juga adalah betul secara keseluruhannya dalam memberi pertimbangan bahawa pembelaan tidak menafikan fakta bahawa perayu sememangnya telah menemui pengadu dan pembantunya di restoran dan ini membuktikan kebenaran fakta bahawa perayu datang untuk suapan rasuah (lihat perenggan 38, 40–41 & 44).

(5) Percanggahan yang ditunjukkan oleh pembelaan di dalam keterangan pengadu, pembantunya dan pegawai-pegawai BPR tentang, sama ada wang yang diberikan melalui tangan kanan atau kiri pembantu gerai atau diterima oleh perayu menggunakan tangan kanan atau kiri adalah isu yang amat kecil yang tidak menjejaskan asas kes pihak pendakwaan. Kerelevanan perkara ini dan isu-isu lain sepertinya yang dibangkitkan

telah disangkal oleh fakta bahawa wang perangkap telah bertukar tangan dan telah ditemui pada perayu. Inti pati kes perayu adalah penafian mutlak dan berdasarkan keseluruhan keterangan hakim mahkamah sesyen telah memutuskan secara betul bahawa bahagian kedua kesalahan tersebut telah dibuktikan. Keterangan amat besar bahawa wang perangkap diterima oleh perayu dan tidak ada alasan bagi pengadu dan pembantunya mereka keterangan berkenaan perkara tersebut. Tambahan penerimaan wang perangkap disaksikan oleh pegawai BPR yang tidak mempunyai dendam terhadap perayu untuk memberi keterangan yang menjejaskan terhadap perayu (lihat perenggan 48 & 67).

(6) Penjelasan perayu bahawa wang perangkap yang diletakkan di atas bahagian belakang kereta perayu oleh seseorang tidak pernah dinyatakan kepada mana-mana saksi pihak pendakwaan dan pihak pendakwaan dinafikan peluang untuk menyangkalnya. Dalam keadaan ini, ia jelas bahawa keterangan ini tidak lebih dari fikir semula semata-mata yang tidak mengatasi keseluruhan beban keterangan (lihat perenggan 68).

(7) Hakim mahkamah sesyen adalah betul dalam menolak pembelaan perayu bahawa dia diperangkap atau dianiaya kerana tidak ada merit atau kebenaran dalam pembelaan yang sebegini. Jika ia adalah benar bahawa perayu diperangkap dia sepatutnya segera mengambil peluang untuk menyatakannya di dalam notis tangkapan apabila ia diserahkan kepadanya (lihat perenggan 69–70).]

Notes

For a case on defence of denial, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) para 1711.

For cases on corruptly receiving gratification, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 97–100.

Cases referred to

Attan bin Abdul Ghani v PP [1970] 2 MLJ 143, HC (refd)

DA Duncan v PP [1980] 2 MLJ 195, FC (refd)

Dato' Haji Azman bin Mahalan v PP [2007] 4 MLJ 142; [2007] 3 CLJ 495, HC (distd)

Hamidon bin Mat Yatim v PP [1995] MLJU 112; [1995] 3 CLJ 724, HC (refd)

Mohamed Alias v PP [1983] 2 MLJ 172, HC (refd)

Mohd Ali Jaafar v PP [1998] 4 MLJ 210, HC (refd)

Mohd Mocta Shariff v PP [1983] 2 CLJ 216, HC (refd)

Mohd Sallehuddin bin Mohd Yusoff v Pendakwa Raya [2005] 3 AMR 491, HC (folld)

PP v Ku Yahya Ku Bhari & Anor [2002] 1 CLJ 113, CA (refd)

Pie bin Chin v PP [1985] 1 MLJ 234; [1983] 1 CLJ 316, HC (refd)
Ramly bin Md Yasin & Ors v PP [1982] CLJ 200, HC (refd)
Tengku Mahmood v PP [1974] 1 MLJ 110, HC (refd)
Thavanathan a/l Balasubramaniam v PP [1997] 2 MLJ 401, SC (refd)

Legislation referred to
Anti Corruption Act 1997 ss 10(b)(aa), 42, 45(3)
Criminal Procedure Code s 112
Penal Code s 323

M Maniam (Maniam K Marappan & Co) for the appellant.
Nur Irmawatie Daud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Ahmadi Asnawi JC:

[1] The appellant was convicted by the learned sessions court judge, Batu Pahat upon the following charges preferred against him:

PERTUDUHAN PERTAMA

Bahawa kamu pada bulan Ogos 2001, pada 10 malam, di gerai Ikan Bakar Teck Soon, dalam Restoran Fook Hwa, Jalan Haji Manan dalam Daerah Kluang, dalam Negeri Johor, sebagai seorang ejen Kerajaan Malaysia iaitu Sarjan Polis No RF 75684 yang bertugas di Unit Pengurusan, Ibu Pejabat Polis Daerah Kluang, Johor, telah secara rasuah meminta untuk diri kamu sendiri satu suapan iaitu wang tunai sebanyak RM1,000.00 (Ringgit Malaysia: Seribu) melalui seorang bernama Lee Siew Lian, sebagai satu dorongan untuk kamu melakukan satu perbuatan yang ada hubungan dengan hal ehwal prinsipal kamu, iaitu menutup kertas siasatan No 789/01 atas Kluang Report 4563/01 dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 10(a)(aa) Akta Pencegah Rasuah 1997 (Akta No 575) dan boleh dihukum di bawah seksyen 16 Akta yang sama.

PERTUDUHAN KEDUA

Bahawa kamu pada 26 September 2002, pada jam antara 6 petang hingga 7 petang, di gerai Ikan Bakar Teck Soon dalam Restoran Fook Hwa, Jalan Haji Manan, dalam Daerah Kluang, dalam Negeri Johor, sebagai seorang ejen Kerajaan Malaysia, iaitu Sarjan Polis No RF 75684 telah memperolehi bagi diri kamu sendiri, suatu suapan, iaitu wang tunai sebanyak RM500.00 daripada seorang bernama Foo Leng melalui seorang bernama Lee Siew Lian di mana suapan tersebut adalah sebagai satu dorongan untuk kamu melakukan suatu perbuatan yang ada hubungan dengan hal ehwal prinsipal kamu, iaitu menutup Kertas Siasatan No 789/01 atas Kluang Report 4563/01, dan dengan ini kamu telah melakukan satu kesalahan di bawah seksyen 11(a) Akta Pencegah Rasuah 1997 dan boleh dihukum di bawah seksyen 16 Akta yang sama.

[2] Upon an appeal lodged before me, the conviction and sentence in

respect of the first charge was set aside and the appellant was acquitted of the same. However the appeal against the second charge was dismissed and the conviction and sentence thereof affirmed. The public prosecutor is now appealing against the decision in respect of the first charge and conversely the appellant is also appealing against the decision regarding the second charge. I proposed to deal with these two appeals together.

[3] The facts in brief are as follows.

[4] On 31 May 2001, SP-1 ('Foo Leng') had lodged a police report vide Kluang Report No 4563/2001 over an incident whereby her husband, SP-3 ('Tong Chee Hiong') was assaulted by several people. SP-13 ('ASP Sulaiman bin A Hamid') in his capacity as the Ketua Bahagian Siasatan Jenayah, IPD Kluang instructed the appellant to investigate the report classified under s 323 of the Penal Code.

[5] As there was no progress in the investigation, SP-1 proceeded to meet the appellant to withdraw the said report. Thereafter, it was alleged that the appellant started frequenting 'gerai Ikan Bakar Teck Soon', run by SP-1 and assisted by his adopted grandson, SP-2, demanding money from SP-1 in order to close the investigation papers (No 789/01) which was opened pursuant to the report lodged by SP-1.

[6] Sometimes in August 2001, while SP-1 was away in Singapore, the appellant came and met SP-2 at the said 'gerai' and demanded RM1,000 or otherwise it would be difficult to withdraw the report or close the case. SP-2 conveyed this demand to SP-1. According to SP-2, the appellant followed up with this demand with further visits to the 'gerai'.

[7] The first charge was based upon this demand or request.

[8] SP-2 added that on 12 September 2002 the appellant again came to the 'gerai', looking for SP-1 to sign certain documents. Again SP-1 was away in Singapore at the material time. The appellant then left the 'gerai' leaving behind his telephone number on a piece of paper (exh P-3) with instructions to SP-2 to inform SP-1 to call him upon her return from Singapore. SP-2 accordingly informed SP-1 of the appellant's visit and the purpose of his visit.

[9] At about 10pm on 24 September 2002 (SP-2 says it was on 23 September 2002), the appellant finally met SP-1 at the said 'gerai' and requested her to sign certain document she later identified as ID-5 at the point the appellant marked 'X'. According to SP-1 the document she was asked to sign was in connection with her request to withdraw the aforesaid

police report. ID-5 in fact is a continuation of SP-1's statement recorded by the appellant under s 112 of the Criminal Procedure Code ('CPC').

[10] On 26 September 2002, SP-1 lodged a report with Badan Pencegah Rasuah ('BPR') over the appellant's demand of RM1,000 in connection with SP-1's request to withdraw her said police report. SP-4 with a team of officers came to SP-1's house to take down the report. Her original report is exhibited as exh P-4A. Exhibit P-4 is the printed version.

[11] The BPR team immediately went into full gear. SP-1 was made to call the appellant through the telephone number given by the appellant as shown in exh P-3. The telephone conversations between SP-1 and the appellant were tape recorded. There were three separate telephone conversations. The original 'pita rakaman' is exh P-10. The transcript is exh P-14. In one of the conversations, SP-1 offered to pay RM500 to the appellant and was accepted by the appellant. The appellant further agreed to come and collect the money at the 'gerai' between 6pm to 7pm on the same instant.

[12] As agreed and arranged, the appellant came to the 'gerai' at about 6pm plus. The said sum of RM500, exh P6A to E, in RM100 denominations (trapped money) was passed to SP-2 by the BPR officers to be given to the appellant. All three were seated at a table in the restaurant (SP-1's 'gerai' was one of the 'gerai-gerai' operating in the restaurant). SP-2 gave the said sum of RM500 to the appellant. The appellant accepted and took the money. This acceptance was witnessed by SP-10, one of the BPR officers assigned to observe the transaction. Soon after the appellant got-up and proceeded to his car. Upon the agreed signage given by SP-1 that the sum of RM500 has been given to and accepted by the appellant, the other members of the BPR team stationed around the premises sprung into action and arrested the appellant when he was already seated at the driver's seat of his car. A body search was conducted and the said marked notes or trapped money amounting to RM500 (exh P6A to E) was recovered from the appellant's right trousers pocket.

[13] The second charge was grounded upon this acceptance of RM500 by the appellant.

THE FIRST CHARGE

[14] In respect of this charge, SP-1 the complainant, knew about the appellant's demand through SP-2, her grandson and helper. Her evidence in respect of the same is too sketchy and obviously wanting. This is what she has got to say, at p 68, line 21 of *rekod rayuan* ('RR')

Ogos 2001 — jumpa pekerja Lee Siew Lan ('LSL'). LSL beritahu OKT jumpa ingin meminta wang. Tujuan wang — ingin tarik balik kes dan jumlahnya RM1,000.

At p 69, line 5 of RR, she testified:

Pada 16 September 2002, balik dari Singapura, LSL berjumpa saya — beri kertas nama dan nombor handphone OKT. Lian cakap OKT jumpa dan mahu minta wang. Nombor telefon di kertas, OKT pesan sudah dapat cukup duit — telefon OKT …

[15] LSL is SP-2. However this aspect of the evidence was not consistent with the evidence of SP-2. At p 83, line 11 of RR SP-2 said:

Pada 12.9.2002 waktu malam — seorang (lelaki) dan (perempuan) tanya taukeh (SP-1). Waktu itu SP-1 berada di Singapura. OKT suruh SP-1 tandatangan satu dokumen. SP-1 tidak ada.

Sama ada boleh wakili SP-1 dan saya tidak tandatangan dokumen itu. Polis beri nombor handphone dan suruh SP-1 telefon balik. Tulis nombor telefon atas kertas.

[16] It is very apparent that from the above, SP-2 did not say anything about the appellant telling him to tell SP-1 to call the appellant once the RM1,000 is available. Neither did the appellant repeated his demand for the RM1,000 at this meeting/occasion. Hence the ponderables — did SP-1 created her own version of the appellant's demand?

[17] Additionally, here and there in her evidence, SP-1 testified that the appellant had repeatedly visited her to demand for the money but she failed to substantiate the time or dates of such requests. In my view not much value can be attached to such evidence. Nor could it be use to strengthened the prosecution's case that the appellant did indeed demanded the said sum from SP-1.

[18] So much for SP-1's evidence. Her testimony is of no evidentiary value at all.

[19] Meanwhile under examination-in-chief, SP-2 testified (at p 82 of RR):

Bulan 8/2001 ada anggota polis datang ke kedai. Saya kenal Sjn Sahari. (SP-2 camkan OKT).

Tanya saya nak buang kes atau pun tidak. Ada tanya kes sukar dibuang. Saya tidak ingat lagi apa-apa. Jika mahu buang kes ini kena bayar RM1,000.00. Jika tidak bayar, tidak ingat lagi … selepas tarikh itu, OKT datang dan tanya wang itu. Saya dah lupa tanya lagi atau tidak fasal wang. Ada tanya kalau tidak RM1,000.00. Bayar RM500.00. Bayar RM500.00 sukar buat kerja dan kes sukar ditutup.

[20] This is his only evidence in respect of the appellant's demand of RM1,000 in his examination in chief. Under cross-examination, at p 88, he said:

> Ogos 2001 — tidak ingat apa yang terjadi.
>
> Tahun 2001 — tiada apa-apa yang terjadi.
>
> Tahun 2001 — tiada apa-apa bayaran — tidak ingat.
>
> S: Tiada bayaran Ogos 2001.
>
> J: Tidak ingat.

[21] No clarification was sought by the prosecution in respect of the testimony above during the re-examination of SP-2.

[22] It is obvious that SP-2's testimony is very unreliable. His 'tidak ingat' is a lot more than what he can 'ingat'. However he did say that the appellant did come back to his 'gerai' after August 2001 to enquire about the money. But SP-2 did not give the specifics ie as to time and dates. SP-2 did not say anything about the appellant repeating his demand during his visits to the 'gerai' on 19 September 2002 and 24 September 2002. On these two occasions, the appellant came to the 'gerai' for some other reasons ie to procure SP-1's signature on ID-5. Equally the charge says that the demand for the said sum was made at 10pm. However SP-2 did not indicate at all that the appellant came to his 'gerai' in August 2001 at night, specifically at 10pm or at other times that night. He did not even mention whether the appellant came during day time or night time.

[23] Now the prosecution sought to rely on the police report exh P-4 and P-4A to fortify the testimonies of SP-1 and SP-2. But the defence contended that exh P-4 is a tampered document as shown in the original copy, exh P-4A. The tampering was done at four instances with no reasonable explanation to account the same. As such exhs P-4 and P-4A are equally unreliable, so the defence argued.

[24] I am with the defence in this respect.

[25] As submitted there were four cancellations and substitutions of exh P-4B as shown at p 254 of RR. Firstly, at line 1, the date '24 September 2002' was cancelled and substituted with a new date '31 May 2001'. Secondly at line 3 '… Sjn Sahari datang jumpa saya …' the word 'saya' was cancelled and substituted with the word 'Ah Lian'. Thirdly, at line 4 '… Sjn Sahari datang jumpa saya …' the word 'saya' was also cancelled and substituted with the word 'Ah Lian'. Finally at line 6, the word 'tahun dahulu' was cancelled. These

cancellations and substitutions were acknowledge/initialled not by the complainant, SP-1 but by the officer who took the report, SP-4.

[26] Learned counsel for the appellant posited the issue whether exhs P-4/P-4A was SP-1's report or SP-1's report tampered by SP-4 to include words SP-4 wanted it to be in to incriminate the appellant. However the learned DPP argued that the cancellations and substitutions were amendments and the complainant is entitled to amend her report at any time before finally acknowledging the report.

[27] However there is nothing to show that SP-1's report was read back to her and that she was invited to make amendments to her report if she so wished. There is also nothing to indicate that SP-1 wished to amend her report in the manner indicated by the cancellations and substitutions. What is worst the cancellations and substitutions were not acknowledged by her but by SP-4. The issue at hand was further compounded by her own admission that she was not conversant in Bahasa Melayu. However no Chinese interpreter was used to assist her in making the report nor verify the contents of the report as her report upon its conclusion. At the end of the day we were left guessing whether the report was her report as she intended it to be or that the report was the report that was tampered by SP-4 without SP-1's knowledge or consent for obvious reasons.

[28] There are other unsatisfactory features relating to the report, exhs P-4/P-4A. The demand was alleged to have been made in August 2001. However the report was lodged only on 29 September 2002, more than a year later. No explanation was given by SP-1 to account for this delay. As decided in *Tengku Mahmood v Public Prosecutor* [1974] 1 MLJ 110 at p 112, a long delay in lodging the report allows room for fabrication. It must be made at the earliest convenient time. It should be noted that the delay in *Tengku Mahmood*'s case was only 13 days, whereas the delay in this case presently before me was about one year and one month. The lapse of such a long period of time and the lack of SP-1's explanation cogent enough to account for the same renders the said report to be of little evidentiary value. SP-1's evidence that she took such a long time to lodge the report on grounds that she was still saving for the money does not make sense for on the day she lodged the said report, her money was still not there.

[29] Additionally, the report P-4/P-4A shows that it was lodged at 2pm. SP-1 in her evidence testified that after lodging the report the BPR officers instructed her to call the appellant. She did so and the appellant was alleged to have agreed to accept RM500 and would come to her 'gerai' between 6.30pm to 7pm that same evening to collect the RM500. However the transcript (exh P14) shows that there were three separate conversations and

A the agreement to accept RM500 were recorded to have taken place at 2.28pm and 3pm respectively. The timing of the third conversation was not available.

[30] From the course of events it is obvious that the sum of RM500 was agreed only after the telephone conversations took place between SP-1 and the appellant. It could not have taken place before the report was lodged. Even the report stated that 'Sjn Sahari cakap RM500 pun boleh' after she made the telephone call. But the report shows that the complaint was lodged at 2pm well before the telephone calls were made. The next question naturally would be was the second paragraph of the report (exh P-4/P-4B) also doctored? To me it seems to be so. The paragraph was created and the sum already decided before the telephone calls to the appellant were made. Or was SP-1 referring to some other telephone calls other than the recorded calls? No explanation was offered by the prosecution and there was no such evidence from SP-1 that she had called the appellant on other occasions other than the three recorded telephone calls.

[31] It was further urged upon me by learned counsel for the appellant to discard and ruled the 'pita rakaman' (exh P-10) and the transcript (exh P-14) inadmissible on account that the safeguards as laid down in *Mohd Ali Jaafar v Public Prosecutor* [1998] 4 MLJ 210 was not observed. On the facts I am in full agreement with him.

[32] Additionally it was also his submissions that there was a break in the chain of evidence in respect of the movement of the said 'pita rakaman'.

[33] The evidence shows that SP-4 who made the tape recordings said that he kept the 'pita rakaman' in his cabinet, properly locked and the keys were with him all the time. No one could access his cabinet. He handed the said 'pita rakaman' to the investigation officer (SP-11) only on 9 October 2002 in a sealed enveloped (at pp 100 and 107 of RR). SP-11 testified that she received several exhibits relating to the case from SP-4. However she did not say in clear terms whether this includes the 'pita rakaman' (at pp 139, line 18, 140 line 11 and 143, line 5 of RR). Upon receipt of the said 'pita rakaman' she proceeded to make a transcript of the same, exh P14. However SP-7 testified that the next day (the day after the arrest of the appellant) SP-4 handed to him the original 'pita rakaman' to make a duplicate copy thereof. The duplicate copy is exh P-16. His testimony in respect of the 'pita rakaman' ended at this point as abruptly as it begun. There is no record from him as to what happens to the 'pita rakaman' after duplicating the same. He didn't say whether he handed it back to SP-4 or that he handed it straight to SP-11. Neither did he say how long the 'pita rakaman' was with him, nor where the

'pita rakaman' was kept during the time the 'pita rakaman' was in his possession. SP-4 did not ever testify that he had given the 'pita rakaman' to SP-7 at any point of time.

[34] Going by the events as narrated above I am in full agreement with learned counsel for the appellant that there was indeed a break in chain of evidence in respect of the movement of the said 'pita rakaman' to the detriment of the appellant. There was no guarantee that the 'pita rakaman' was not tampered along the way or during the time it was in SP-7's possession and thereafter. Equally it was not known where the 'pita rakaman' went after SP-7 handled the same. There were three tape recordings. But only two were played in court. The duplicate was also not played in court. The transcriptions of the recordings were also not shown, read and explained to SP-1 to verify the accuracy of the conversations recorded in the tapes. Additionally no questions were asked from SP-1 as regards to the correctness of the tape recorded conversations when the tape was played in court.

[35] In my view these short comings are fatal and for all the reasons given the 'pita rakaman' (exh P-10) and the transcript (exh P-14) ought not to be admitted as evidence. The learned sessions judge was clearly in error when he admitted exh P-10 and P-14 as evidence, and made reference or relied on the same in arriving at his findings.

[36] At the end of the day it is my view that the evidence adduced is thoroughly inadequate to warrant the findings of a prima facie case against the appellant in so far as the first charge is concerned. Hence I allowed the appellant's appeal in respect of the same, both against the conviction and sentence.

THE SECOND CHARGE

[37] In respect of this charge the prosecution is to prove:

(i) the appellant is an agent of the Government of Malaysia;

(ii) the appellant corruptly accepts or obtains for himself gratification amounting to RM500; and

(iii) upon proved of ingredient (ii), the legal presumption under s 42 of the Anti Corruption Act 1997 ('Act') shall apply, ie the gratification shall be presumed to have been corruptly accepted or obtained as an inducement to do any act in relation to his principal's affairs as particularised in the charge, unless the contrary is proved.

[38] The first ingredient is more or less conceded by the appellant. They didn't make any noise over the same.

[39] As regards to the second ingredient, it was the appellant's submission that contrary to the findings of the learned sessions judge the transaction of the said sum from SP-2 to the appellant did not take place. There is no evidence to show that SP-2 did physically give the RM500 (marked notes) to the appellant by his own hands. This submission is grounded upon:

(i) it was not clear from the evidence whether SP-2 gave the said sum to the appellant through his right or left hand;

(ii) SP-1 who was with SP-2 when the said sum was given to the appellant said that after receiving the said sum the appellant told her that he could now close the case whereas SP-2 didn't say anything to that effect. In fact SP-2 said that he did not know what was spoken by the appellant;

(iii) SP-10, the only BPR officer who witnessed the transaction was not sure through which hand the appellant accepted the money or through which hand SP-2 gave the money to the appellant;

(iv) SP-10 was seated together with SP-7 but SP-7's view was blocked by a concrete pillar and was not able see the transaction;

(v) confusion as to where the appellant was actually arrested whether inside his car at the driver's seat or outside the car;

(vi) confusion as to where the RM500 was recovered/seized — whether from the appellant's right trousers pocket or on top of a table inside the restaurant's kitchen;

(vii) absence of anthracene powder on the marked notes and no attempt made to trace appellant's finger prints on the RM500 notes to prove the appellant actually handled the money as there was challenged to the same as required in *Dato' Haji Azman bin Mahalan v Public Prosecutor* [2007] 4 MLJ 142; [2007] 3 CLJ 495.

[40] I have thoroughly scrutinised the findings of the learned sessions judge in respect of the second ingredient of the offence and the grounds/reasons for such findings. These are findings of facts and I am in full agreement with his findings therein and I find no plausible reasons to depart therefrom. The learned sessions judge had considered every material aspect there is to be considered both on points of facts and law that leaves no room for interference (at pp 27–33, line 5 of RR).

[41] The learned sessions judge had carefully considered the testimonies of SP-1 and SP-2 who gave the RM500 to the appellant and SP-10 who witnessed the transaction from where he was seated. He concluded that they

were reliable witnesses. SP-10 bore no grudge against the appellant and there was no reason for SP-10 to testify adversely against the appellant. He accepted SP-2's testimony that he gave/handed the RM500 trapped money to the appellant. He also accepted SP-1 and SP-10's testimonies who witnessed the transaction. The learned judge was entirely correct in doing so. These three witnesses have not been proved to be liars or that their testimonies have been proven to be bareth of credibility or were suffering from inadequacies either in form, substance or credit worthiness to warrant total rejection.

[42] The learned sessions judge had also considered the evidence of SP-4 who was honest enough to say that he could not see the movement of the appellant properly because there was a parked motorvan blocking his view. The learned sessions judge also considered the testimony of SP-5 who stationed himself outside the restaurant, noticed a male Malay coming out from a Proton Iswara bearing registration No JCP 36 and met SP-1 and SP-2 but did not know what transpired because a motorvan came and blocked his view. The learned sessions judge also considered the evidence of SP-6, who was also outside the restaurant. This witness saw a male Malay coming out from a car and entered the restaurant. Once inside he did not know what transpired thereafter. SP-7's testimony, who was inside the restaurant was also considered. SP-7 saw the target with SP-1 inside the restaurant. Then SP-2 came and joined the target at a table. However he could not see SP-2's position as his view was blocked by a concrete pillar inside the restaurant.

[43] The learned session's judge opined that though SP-4, SP-5, SP-6 and SP-7 did not witnessed the transaction of the trapped money from SP-2 to the appellant this does not mean that SP-2 did not give/hand the money to the appellant. He relied on the testimony of SP-10 who witnessed the appellant accepting the said trapped money. He found SP-10 to be a credible witness and there is no ulterior motive for SP-10 to give such incriminating evidence against the appellant. He was entirely correct in coming to such conclusion. SP-4, SP-5, SP-6 and SP-7 have valid reasons for not being able to witness the transaction. On the facts though, the acceptance of SP-10's evidence is sufficient evidence to corroborate SP-2's testimony that he indeed did give the said trapped money to the appellant and that the appellant so accepted the said sum.

[44] The learned sessions judge was also entirely correct to take into account that the defence did not dispute the fact that the appellant did infact meet both SP-1 and SP-2 at the said restaurant. This lends credence that the appellant came for the corrupt gratification.

[45] The learned sessions judge also correctly handled the discrepancies regarding the point of arrest of the appellant occurring among the BPR

witnesses. SP-4 and SP-5 testified that the appellant was arrested after he had entered his car. However SP-7 testified that the appellant was arrested before the appellant entered his car. But the learned sessions judge opined that it was a minor discrepancy and has a lot to do with the varying powers of cognition of each of the witnesses and that such discrepancies does not in any way affected the credibility of the said witnesses. I am entirely with him in this proposition of the law. It is trite law, as shown in the passages quoted by him in *Mohamed Alias v Public Prosecutor* [1983] 2 MLJ 172 and *Pie bin Chin v Public Prosecutor* [1985] 1 MLJ 234; [1983] 1 CLJ 316. It was stated in the latter case that '… Various persons are endowed with varying powers of cognition, attentiveness and perception, so that it is not uncommon for two witnesses to a common event to describe it in slightly differing versions …'

[46] The learned sessions judge also found that the appellant took out the RM500 trapped money from his right trousers pocket he was wearing upon being searched by the BPR officers. SP-6 then counter checked the said sum recovered with the 'senarai wang bertanda', exh P-8 and confirmed that the serial numbers of the said trapped money were consistent with the serial numbers of the notes recorded in exh P-8. The learned sessions judged then opined that the recovery of the trapped money from the appellant's right trousers pocket constitute the most cogent corroborative evidence that the appellant had accepted/obtained the said gratification corruptly. I am entirely in full agreement with this finding (*Ramly bin Md Yasin & Ors v Public Prosecutor* [1982] CLJ 200 and *Hamidon bin Mat Yatim v Public Prosecutor* [1995] MLJU 112; [1995] 3 CLJ 724).

[47] I am also in full agreement with the learned sessions judge that SP-1 and SP-2 are not accomplices to the commission of this crime. Even if so considered there are more then enough corroborative evidence to corroborate both SP-1 and SP-2's evidence as indicated in the preceding paragraphs.

[48] As regards to the appellant's complaints as enumerated in items (i) and (iii) above, in my view the issues are very minor issues which does not erode the crux of the prosecution's case. What is a lot more important is whether the appellant accepted the said sum of RM500 from SP-2. As said earlier the court's findings was in the affirmative. The relevance of the issues raised is further negated by the factum of the recovery of the said sum from the appellant's right trousers pocket.

[49] Item (ii) is a non-issue. The notes of evidence shows that SP-2 merely said that he could not now remember what was said by the appellant after the said sum was given to and accepted by the appellant (p 85, lines 13 and 14 of RR). It is certainly not in terms as that suggested by learned counsel for

the appellant. There is a world of a difference between not remembering what was said by the appellant and not knowing at all what was said by the appellant.

[50] Item (iv) is also a non-issue. Both were of course not seated together on a single chair. SP-10 testified that he was not seated at the same table with SP-7. Both were seated at two different tables. SP-10 said that he was seated about two tables away from SP-7 (p 134 lines 23 and 24 and p 135 line 1 and 2 of RR). What was testified by SP-10 was what he could see from the angle where he was seated. Obviously his vision from where he was seated was not blocked by the presence of the said concrete pillar for he was away from the location where SP-7 was seated.

[51] Item (v) has been dealt with earlier. There is no need for a repetition.

[52] Item (vi) is also a none issue. It was never suggested to both SP-1 or SP-2 that the said sum was placed on a table inside or beside the kitchen of the restaurant. Equally the testimonies of SP-4, SP-5, SP-7 and SP-10 were unequivocal that the RM500 was recovered from the appellant's right trousers pocket. The appellant himself took the money out of the said pocket upon a bodily search being done. The four said witnesses survived the test of cross-examination and their evidence relating to the same remained uncontroverted to the end (pp 106, 111, 112, 125, 127, 137 and 138 of RR). I have no hesitation in agreeing with the findings of the learned sessions judge when he accepted their evidence that the said RM500 was recovered from the right trousers pocket of the appellant.

[53] In respect of item (vii) I am of the view that in this case, trapped money was involved. The serial numbers of the said notes were marked and recorded as per exh P8 (senarai wang bertanda). The serial numbers of the said sum recovered from the appellant matched perfectly with serial numbers recorded in exh P-8. This recovery provides the most cogent evidence that the said sum was given to and accepted by the appellant. The presence of anthracene powder would not have had the profound effect in fortifying the prosecution's case. Conversely its absence on the person of the appellant would not occasioned an erosion of the prosecution's evidence in anyway. The factum of the recovery of the said marked notes from the appellant is corroborative enough.

Dato' Haji Azman bin Mahalan's case is easily distinguishable from the case presently before me. There the accused was charged for corruptly giving gratification, an offence under s 10(b)(aa) of the Act. Thus the need for finger printing evidence is much more apparent and relevant.

[54] Learned counsel for the appellant also submitted that SP-1 harboured a motive to fix the appellant. She wanted to withdraw her report and put the investigation to rest. This has been going on for more than a year but nothing was done by the appellant. The only way out, it was submitted, is to fix the appellant. However I find this submission rather strange. Her husband was assaulted by several people. There was no progress in the investigation. For reasons best known to her, she decided to withdraw her report. That was all she wanted. She has nothing to gain by withdrawing the report and a lot to lose by doing so. Her husband got no justice and the perpetrators of the crime will never be taken in to answer for their crimes. Hence, in such event it makes no complete sense for SP-1 to fix the appellant just because the appellant refused or delayed SP-1's requests to withdraw her report and close the case. There is no merit nor substance at all in the submissions.

[55] As indicated earlier, the findings of the learned sessions judge in respect of the second ingredient of the offence are primarily findings of facts. On the facts and law, I have no reason to interfere with such findings. Hence on the facts and evidence I am of the view that the learned sessions judge had correctly concluded that the second ingredient of the offence has been proven.

[56] On account that the second ingredient of the offence has been proven, the legal presumption under s 42 of the Act arose that the money had been given and received corruptly by the appellant as an inducement to close Kertas Siasatan No 789/01 pursuant to Kluang Report 4563/01 lodged by SP-1. The burden now shifted to the appellant to rebut the said presumption on a balance of probabilities. The rule in *Thavanathan a/l Balasubramaniam v Public Prosecutor* [1997] 2 MLJ 401, at p 421 was '… it was for the accused to give an innocent explanation which the court considered more likely than not that it was true …' (also *Attan bin Abdul Ghani v Public Prosecutor* [1970] 2 MLJ 143 and *Public Prosecutor v Ku Yahya Ku Bhari & Anor* [2002] 1 CLJ 113). Having found that the appellant failed to rebut the said presumption at the stage of the prosecution's case, the learned sessions judge correctly called the appellant to enter his defence.

[57] Having scrutinised the defence I can't help but agree with the findings of the learned sessions judge that the defence is essentially a bare denial. He denied going to the restaurant on purpose but was waved by SP-1 to drop-by while passing in front of the restaurant on his way home in his car. He obliged. This however was not put to SP-1 or to the other prosecution witnesses. If put to the BPR witnesses, those stationed outside the restaurant could have easily seen it and could have confirmed or denied the same. The learned judge ruled this to be an afterthought. I agree with him.

[58] At the 'gerai', he took a seat at the kitchen of the 'gerai'. The concrete pillar was at his back. SP-1 was seated with him. At where they were, any one seated at the restaurant will not be able to see them. Soon after SP-2 joined them. In my view this is fallacy. SP-10 who was seated in the restaurant was able to see all three of them from where he was seated. Equally SP-7 whose view was partially blocked by the concrete pillar was also able to see all the three of them seated together at the same table. There is no plausible reason for these two witnesses to concoct their testimonies.

[59] At p 155 of RR, line 15 onwards the appellant testified:

> Pelanggan tidak boleh masuk. Orang awam duduk dalam restoran di 'A' dalam D23. Semua orang tidak boleh masuk dapur. Pintu macam pintu mahkamah. Panas dan tidak selesa. Pengadu ajak duduk sana. Cucu (who is SP-2- mine) tanya apa khabar. Selepas itu cucu berkata ini untuk minum. Selepas itu dia letakkan sesuatu atas meja masak belakang kiri saya. Letak, dia tidak cakap. Saya tidak lihat. Cucu duduk sebelah kiri saya. Cucu pun dalam kerusi rendah. Cucu beritahu encik, telah tolong kita. Saya jawab itu kerja saya. Boleh tidak boleh kena buat aja. Boleh tolong, saya tolong. Lepas itu dengar azan maghrib dan saya beritahu SP-1 dan SP-2 nak balik.

[60] This evidence being the crux of the defence case, again in my view is a figment of the appellant's imagination. It was never suggested to SP-2 that he placed something on the cooking table at the appellant's rear left. It was also not put to SP-2 that SP-2 told him '… encik telah tolong kita …' and the rest of the conversation therein. What was suggested to SP-2 was merely that '… OKT tidak sempat ambil/pegang wang dalam tangan …' as seen at p 90, line 15 of RR. It is not known whether this suggestion refers to the 'something' SP-2 allegedly placed at the cooking table. If this 'something' refers to the RM500, it simply means that the RM500 was never placed on the table.

[61] At p 156, line 15 onwards of RR the appellant continued:

> … Selepas nak bangun, dengar azan maghrib, naik (nak? — mine) balik — datang tiga orang lelaki — satu India dan dua Melayu. Tahan saya. Selepas itu, mereka kata BPR. Saya berkata apa hal. Mereka kata saya terlibat dengan rasuah. Saya kata 'mana ada'. Salah seorang tunjukkan atas meja. Pandang atas meja ada wang. Saya tidak tahu jumlah …

[62] At p 157 line 1:

> Salah seorang suruh ambil duit dari dapur. Enggan ambil. Berkata itu bukan wang saya. Enggan ambil, dua orang lelaki bawa ke kereta saya …

[63] These, equally are the crux of the defence case. But none of these evidence relied upon by the appellant were put to SP-1, SP-2, SP-4, SP-5, SP-6, SP-7 and SP-10. It was never suggested to the witnesses that he was detained at the kitchen of the 'gerai', that one of BPR officers pointed to him the table, he saw money on the table, that one of officers requested him to take the money from the kitchen and that he refused to pick up the money. As reiterated earlier, less weightage could be attached to such assertion. I am most inclined to view it as a product of his afterthought, an outright bare denial, as was the findings of the learned sessions judge.

[64] At line 9 of the same page the appellant continued:

> Kiri kanan pegang — pergi ke kereta. Dalam kedai kecoh. Berhenti bonet belakang kanan — mereka minta serahkan kad kuasa dan handphone saya. Selepas itu lelaki serah meja atas dapur datang, letakkan wang atas bonet belakang kereta. Ini wang RM500 engkau minta daripada pengadu. Saya kata mana saya tahu. Selepas itu salah seorang gari kedua tangan saya di depan …

[65] This was the first time that it was revealed in evidence that the said RM500 was brought from the kitchen and placed on the top of the rear bonnet of the appellant's car by someone. It is apparent that the essence of the appellant's case was a complete denial of accepting the said RM500 from SP-2. He denied ever seeing the money until it was pointed to him lying on the table by one of the BPR officers. The money was never ever on his person, much less recovered from his right pocket of his trousers. It was placed on the top of the rear bonnet of his car.

[66] However in the light of the totality of the evidence I am in complete agreement with the findings of the learned sessions judge that the appellant's defence is nothing more than a bare denial. There is nothing innocent in the defence of the appellant. Besides, it was overwhelmed with afterthoughts as enumerated earlier. The evidence is overwhelming that the said RM500 was accepted by the appellant. There is no reason for SP-1 and SP-2 to concoct their evidence relating to the same. It was not shown anywhere that either SP-1 or SP-2 harboured a grudge to grind against the appellant. Additionally the said acceptance was witnessed by SP-10. SP-10 too has no grudge against the appellant to the extent that he was prepared to testify adversely against the appellant. He was seen and heard by the learned sessions judge and the learned judge found him to be a truthful and reliable witness. I have no business to judge otherwise. Equally the learned sessions judge opined that SP-1 and SP-2 were credible witnesses whose testimonies could be relied upon. Again it could be wrong for me to judge otherwise.

[67] Additionally, the crux of the matter that the said RM500 was brought

from the kitchen of the 'gerai' and placed on top of the rear bonnet of the appellant's car was never suggested to any of the prosecution witnesses relevant to the issue. The prosecution was denied the opportunity to rebut the same. In my view this piece of evidence is nothing more than mere afterthought. Quite to the contrary, it goes against the weight of the totality of the evidence. The prosecution's evidence that the said RM500 was recovered from the right pocket the appellant's trousers remains solid and uncontroverted.

[68] Finally the appellant claimed to have been trapped. Just before concluding his examination-in-chief he said 'Pada 26 September 2002 — tidak sangka akan diperangkap'. However the learned sessions judge rejected this defence. For the same reasons already given in the preceding paragraphs, I am in full agreement with him and ruled that there are no merits nor substance in this line of defence.

[69] I am also in agreement with the learned sessions judge that if it is true that he was framed/trapped, he should immediately take the opportunity to state so or make a notation thereof in the notis tangkapan issued under s 45(3) of the Act (exh P-12) when the said notice was served upon him. Rather, he merely noted 'Buat masa ini tiada apa yang hendak saya nyatakan sekarang'. The appellant had the opportunity to state and fortify his case at the earliest possible opportunity, but he didn't take the opportunity. By way of comparison the learned sessions judge cited *Mohd Sallehuddin bin Mohd Yusoff v Pendakwa Raya* [2005] 3 AMR 491. The accused there staged his defence immediately upon his arrest by stating that the money he received was not corrupt money but the repayment of a loan taken by the complainant from him.

[70] It was the learned sessions judge's findings that the defence put forth by the appellant were mere denial bareth of substance, incapable on the balance of probabilities of rebutting the presumption invoked against him. I am in complete agreement with him.

[71] It is also his findings that the defence, on the evidence, equally failed to raise a reasonable doubt on the prosecution case against the appellant. I have no reason to interfere with his findings. The mere denial of the appellants evidence without other proof to reasonably dislodge the prosecution evidence failed to cast a reasonable doubt on the prosecution's case against the appellant (*DA Duncan v Public Prosecutor* [1980] 2 MLJ 195; *Mohd Mocta Shariff v Public Prosecutor* [1983] 2 CLJ 216). Hence the appellant's appeal against the conviction in respect of the second charge is dismissed. The appeal against the sentence imposed is also dismissed on

account that there is no submission upon the same. In my view the sentence imposed is adequate and fair in all the circumstances of the case.

Appeal in respect of first charge allowed and appeal in respect of second charge dismissed.

Reported by K Nesan